



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Deanna T Ongwela
9231 Redbridge Court
Laurel MD 20723

MAILED

MAR 05 2012

OFFICE OF PETITIONS

In re Patent of Deanne T. Ongwela :
Patent No. 6,669,657 :
Issue Date: December 30, 2003 : Decision and Request for Information
Application No. 09/665,608 :
Filing Date: September 20, 2000 :
For: Massage and Tactile Stimulation :
Device :

This is a decision and letter in response to a paper filed January 27, 2012, which is being treated as a petition under 37 C.F.R. § 1.183 and a petition under 37 C.F.R. § 1.378(b).

The Petition Under 37 C.F.R. § 1.183

The petition under 37 C.F.R. § 1.183 is **dismissed**.

A petition under 37 C.F.R. § 1.378(b) must include the \$700 surcharge set forth in 37 C.F.R. § 1.20(i)(1). Petitioner has not submitted the \$700 surcharge and requests waiver of the surcharge.

37 C.F.R. § 1.183 states, with emphasis added,

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, sua sponte, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section **must** be accompanied by the petition fee set forth in § 1.17(f).

The fee of \$400 set forth in 37 C.F.R. § 1.17(f) has not been submitted. Therefore, the merits of the request for waiver of the \$700 fee will not be addressed.

If Petitioner files a renewed petition under 37 C.F.R. § 1.183 and the \$400 fee, the petition may request a waiver of the rules in order to permit a refund of the \$400 petition fee.

As a courtesy, the Office notes a petition under 37 C.F.R. § 1.183 must establish the existence of an extraordinary situation. Proof a party's delay in payment of a maintenance fee was unavoidable would not, without more, establish the existence of an extraordinary situation since all petitions under 37 C.F.R. § 1.378(b) must include such proof.

The Petition Under 37 C.F.R. § 1.378(b)

Background

The patent issued December 30, 2003.

The 7.5 year maintenance fee was due between December 30, 2010, and June 30, 2011, or with a surcharge, from July 1, 2011, to December 30, 2011.

Petitioner's husband passed away during April 2011, and Petitioner closed her small business during June 2011 to take care of her 9-year old son.

During August 2011, Petitioner was aware the total fee owed at the time was \$1,305, which is the sum of the \$1,240 maintenance fee and a \$65 surcharge.

Effective September 26, 2011, the 7.5 year maintenance fee for small entities was increased to \$1,425 and the surcharge for payment during the six-month period for small entities was increased to \$75.

The maintenance fee was not timely paid and the patent expired on December 31, 2011.

During December 2011, Petitioner contacted the Office to clarify the fees owed and learned of the fees had been increased.

Petitioner states Petitioner was unable to pay the unexpected significant increase prior to receiving a paycheck on January 6, 2012. ➡

Petitioner appears to have filed a Maintenance Fee Transmittal Form and a Credit Card Authorization Form by facsimile transmission on January 6, 2012.

The Office did not accept the fee and Petitioner subsequently learned the patent had expired.

Discussion

The required \$700 surcharge has not been submitted. Therefore, the merits of the petition under 37 C.F.R. § 1.378(b) will not be addressed at this time.

Petitioner has submitted the 7.5 year maintenance fee and an additional \$75. If Petitioner wishes for the Office to address the merits of the petition under 37 C.F.R. § 1.378(b), Petitioner must submit an additional \$625 (\$700 - \$75) within TWO MONTHS of the mailing date of this letter. Extensions of time may not be obtained. The response to this Requirement for Information

should include a cover letter entitled "Response to Request for Information." The failure to file a timely reply to the instant Request for Information will be interpreted as a desire to no longer pursue reinstatement of the patent and the Office will give no further consideration to the matter.

If Petitioner does not wish to submit the additional \$625, Petitioner may request a refund of the \$1,500 submitted January 27, 2012. A request for a refund of the \$1,810 may be sent to: Mail Stop 16, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450. A copy of this letter should accompany any request for refund.

If a response to the instant request and \$625 are filed, Petitioner should ensure the response includes proof Petitioner was unable to timely pay the fee. The current record fails to provide specific information regarding Petitioner's income, expenses, assets or liabilities.

If a response to the instant request and \$625 are filed, Petitioner should identify the nature of the card used to pay the 7.5 year maintenance fee on January 6, 2012. If the card was a credit card, Petitioner should explain why she needed to receive the January 6, 2012, prior to paying the fee with a credit card.

Petitioner may file a petition under 37 C.F.R. § 1.378(c) in response to the instant request instead of pursuing relief under 37 C.F.R. § 1.378(b) or requesting a refund of the \$1,500 filed January 27, 2012. A copy of a blank form which may be used to file such a petition is attached. A petition under 37 C.F.R. § 1.378(c) is different than a petition under 37 C.F.R. § 1.378(b) in two main respects.

- (1) (A) A petition under 37 C.F.R. § 1.378(b) must prove the entire delay in payment of a fee was unavoidable, and
- (B) A petition under 37 C.F.R. § 1.378(c) merely needs to state the delay in payment of the fee was unintentional.
- (2) (A) The surcharge for a petition under 37 C.F.R. § 1.378(b) is \$700, and
- (B) The surcharge for a petition under 37 C.F.R. § 1.378(b) is \$1,640.

Since Petitioner has already submitted \$1,500, the remainder of the fees due if a petition under 37 C.F.R. § 1.378(c) is \$1,565 (\$1,425 + \$1,640 - \$1,500).

Further correspondence with respect to this matter may be submitted as follows:

By Internet: A request for reconsideration may be filed electronically using EFS Web.¹
Document Code "PET.OP" should be used if the request is filed electronically.

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

¹ General Information concerning EFS Web can be found at <http://www.uspto.gov/patents/process/file/efs/index.jsp>.

By facsimile: (571) 273-8300
Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

If Petitioner wishes to discuss the instant decision, Petitioner should feel free to contact Senior Petitions Attorney C. Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Attachments: Petition Under 37 C.F.R. § 1.378(c) Form
Privacy Act Notice



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS

FEB 10 2012

COPY

Ms. Deanna T. Ongwela
9231 Redbridge Court
Laurel, MD 20723

Dear Ms. Ongwela:

Thank you for your letter of January 27, 2012, addressed to Mr. David Kappos, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (USPTO). Your letter has been referred to the Office of the Commissioner for Patents for response.

In your letter, you state that due to personal reasons, you were unable to pay the maintenance fee of \$1,500 for now expired United States (U.S.) Patent 6,669,657 until you received a paycheck on January 6, 2012. You also request the acceptance of the \$1,500 maintenance fee and the reissuance of your patent without filing for a petition due to your extenuating circumstances.

Please allow me to start by explaining that the USPTO may accept the payment of any maintenance fee due on a patent after expiration of the patent if, upon petition, the delay in payment of the maintenance fee is shown to have been unavoidable or unintentional and if the surcharge required by section 1.20 (i) is paid as a condition of accepting payment of the maintenance fee. If the USPTO accepts payment of the maintenance fee upon petition, the patent shall be considered as not having expired.

For your convenience, I am including the following two petition options for you to follow, if you so choose, in order to reinstate your expired Patent:

I. UNAVOIDABLE DELAY

37 CFR 1.378(b) provides that a patent may be reinstated at any time following expiration of the patent for failure to timely pay a maintenance fee. A petition to accept late payment of a maintenance fee, where the delay was unavoidable, must include:

(A) The required maintenance fee set forth in 37 CFR 1.20 (e)-(g)

(B) The surcharge set forth in 37 CFR 1.20 (i) (1)

(C) A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent.

The required showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly. Furthermore, an adequate showing requires a statement by all persons with direct knowledge of the cause of the delay, setting forth the facts as they know them. Copies of all documentary evidence referred to in a statement should be furnished as exhibits to the statement.

II. UNINTENTIONAL DELAY

Under 35 U.S.C. 41(c) (1), the Director of the Office may accept late payment of any maintenance fee filed within 24 months after the 6-month grace period, if the delay in payment is shown to the satisfaction of the Director of the Office to have been unintentional.

In addition to the timeliness deadline set forth in the preceding paragraph, a petition filed under the unintentional standard of 37 CFR 1.378(c) must include:

- (A) The required maintenance fee set forth in 37 CFR 1.20 (e) through (g);
- (B) The surcharge for an unintentionally expired patent as set forth in 37 CFR 1.20 (i)(2)
- (C) A statement that the delay in payment of the maintenance fee was unintentional.

A person seeking reinstatement of an expired patent should not make a statement that the delay in payment of the maintenance fee was unintentional unless the entire delay was unintentional, including the period from discovery that the maintenance fee was not timely paid until payment of the maintenance fee. For example, a statement that the delay in payment of the maintenance fee was unintentional would not be proper when the patentee becomes aware of an unintentional failure to timely pay the maintenance fee and then intentionally delays filing a petition for reinstatement of the patent.

I hope this letter has addressed all your concerns and explained the options available to you in order to reinstate your patent. If you have any further questions relating to this matter, please call (571) 272-8800.

Sincerely,



Anthony Caputa
Office of the Commissioner for Patents

Prepared by Wael Fahmy/USPTO Patents/571-272-8800/02-10-2012
Reviewed by Anthony Caputa


Copies to: Under Secretary and Director File (EDMS Folder No. 16905)
Commissioner for Patents

Jump down to: [Attachments](#) [Assignments](#)

Folder ID

16905

From

Primary		Correspondent	
	Deanna T. Ongwela		Remove

To/Owner

PATENTS

Addressed To

Classification

Patent Issues

Subject

Letter Requesting Assistance in the Reconsideration of the Surcharge for Expired Patents

Keyword Summary

Mail Type

Fax

Folder Types

Type	Description
No records to display.	

Tracking ID

Created On

1/27/2012 9:16 AM

Created By

NEWMAN,VICKI

Modified On

1/27/2012 9:18 AM

Modified By

NEWMAN,VICKI

Dates

Date Sent

1/27/2012

Date Received

1/27/2012

Date Due

2/10/2012

☒ **Compute Now**


(The system will automatically set Date Due if left blank.)

Date Closed

Attachments

Change page: 1

Page 1 of 1, Records 1 to 1 of 1.

Type	Name	Item Number	Classification	Description	Last Modified By	Last Modified
	Letter from Deanna T. Ongwela.pdf	506104	Patent Issues		vnewman	1/27/2012 9:17:34 AM

Change page: 1


Page 1 of 1, Records 1 to 1 of 1.

Assignments

[New](#)

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Page 1 of 1, Records 1 to 1 of 1.

Status	Action	Assigned To	Assigned By	Status	Work Sequence	Date Assigned	Date Due	Closed	Classification
	 Take Appropriate Action Activity: Please see attached letter regarding the surcharge for expired patents Notes:	Jackson, Elisa	NEWMAN, VICKI	Active		1/27/2012	02/10/2012		Patent Issues

Change page: ◀ 1 ▶

Page 1 of 1, Records 1 to 1 of 1.



January 27, 2012

Mr. David Kappos
Undersecretary For Intellectual Property & Director
Patent & Trademark Office
Fax: 571.273.0464

Re: Patent # 6669657 Application # 09665608

Dear Mr. Kappos:

I am writing to request your assistance in the reconsideration of the surcharge for expired patents. My seven and a half year maintenance fee was due in July 2011. However, the man I was married to for 13 years and the father of our 9 years old son, at that time, passed away in April 2011. As a woman, mom and small business owner, my family comes first.

Unable to run my small business and assist my son with his grief, I closed my physical store location in June 2011. Due to the numerous changes in the life of my son, and me I was financially unable to pay the seven and a half year maintenance fee. I received notice in August 2011 that a surcharge was added for a total of \$1305. I phoned the Patent & Trademark Office (PTO) in December 2011, to clarify the financial fees to discover the fees had increased to \$1425 with a \$75 surcharge for a total of \$1500. Already financially challenged from the loss and in this economy, this was an unexpected significant increase. I was financially unable to pay that significant increase until I received a paycheck on January 6, 2012.

At that time, I faxed in the "Maintenance Fee Transmittal Form" and the "Credit Card Payment Form (PTO-2038)" for \$1500. By Friday, February 13, the funds had not been withdrawn from my account. I phoned the PTO (1.800.PTO.9199) and was informed my patent had expired. I asked if there was anything that could be done due to my extenuating circumstances and was informed, "No." I persisted and was eventually informed of the Office of Petitions (571.272.3282). I phoned the Office of Petitions and spoke with a gentleman who informed me of the additional surcharges for the expired patent petition, whether unavoidable (\$700) or unintentional (\$1600 +). I inquired if that amount was the fee for a small entity.

Due to my extenuating circumstances, I am requesting the acceptance of my \$1500 maintenance fee for the reissuance of my patent #6669657. I am aware President Obama has a strong desire and aggressive plan to assist small business owners and Americans with innovative ideas pursue commerce in a national and international market. As a mom, my son comes first, but I desire to secure a livelihood for the future.

Thank you in advance for reviewing and considering this request in this economy. Your attention is greatly appreciated. I can be reached at 410.880.4091 or at deanna@deannatee.com.

Sincerely,



Deanna T. Ongwela
Patent #: 6669657
Application #: 09/665608
9231 Redbridge Court
Laurel, MD 20723
410.880.4091

enclosures

PTO/95/65 (03-09)
Approved for use through 03/31/2012, OMB 0551-0018
U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF
MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**

Docket Number (Optional)

Mail to: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450
Fax: (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Patents Information at (571) 272-3282.

Patent Number: 16669657

Application Number: 09/665608

Issue Date: December 30, 2003

Filing Date: September 20, 2000

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

Also complete the following information, if applicable:

The above-identified patent:

☒ is a reissue of original Patent No. 16669657 original issue date 12/30/03;
original application number 09/665608
original filing date 9/20/2000

☐ resulted from the entry into the U.S. under 35 U.S.C. 371 of international application
_____ filed on _____

CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is

(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR

(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

1/27/2012
Date

Deanna T. Onawela
Signature

Deanna T. Onawela
Typed or printed name of person signing Certificate

(Page 1 of 4)

This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PTO/SB/85 (03-09)

Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

1. SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27

2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/> \$ _____	3 ½ yr fee	(1551)	<input type="checkbox"/> \$ _____	3 ½ yr fee	(2551)
<input type="checkbox"/> \$ _____	7 ½ yr fee	(1552)	<input checked="" type="checkbox"/> \$ <u>1425.00</u>	7 ½ yr fee	(2552)
<input type="checkbox"/> \$ _____	11 ½ yr fee	(1553)	<input type="checkbox"/> \$ _____	11 ½ yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ _____

4. SURCHARGE

The surcharge required by 37 CFR 1.20(l)(1) of \$ Request Waiver (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.SURCHARGE FEE BEING SUBMITTED \$ See attached
Request Waiver

5. MANNER OF PAYMENT

- ☐ Enclosed is a check for the sum of \$ _____
- ☐ Please charge Deposit Account No. _____ the sum of \$ _____
- ☒ Payment by credit card. Form PTO-2038 is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

- ☐ The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. _____

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Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

7. OVERPAYMENT

As to any overpayment made, please

☐ Credit to Deposit Account No. _____

OR

☐ Send refund check

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.

Deanna T. Onawela
Signature(s) of Petitioner(s)

1/27/2012
Date

Deanna T. Onawela
Typed or printed name(s)

Registration Number, if applicable

9231 Redbridge Court
Address

410.880.4091
Telephone Number

Laurel MD 20723
Address

ENCLOSURES:

- ☒ Maintenance Fee Payment
☒ Statement why maintenance fee was not paid timely
☐ Surcharge under 37 CFR 1.20(i)(1) (fee for filing the maintenance fee petition) Requested Waiver-submitted
☐ Other: _____

Approved for use through 03/31/2012. CMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

Deanna T. Ongwela
Signature

1/27/2012
Date

Deanna T. Ongwela
Type or printed name

Registration Number, if applicable

STATEMENT

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

Please see attached letter.

(Please attach additional sheets if additional space is needed)



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Deanna T. Angwela

January 17, 2012

This is in response to the request made to the Office of Petitions Help Desk on January 13, 2012.
In accordance with the above request, please find enclosed the form(s).

If you have further questions, please free to contact the help desk at (571) 272 - 3282.

Help Desk
Office of Petitions

Facsimile Transmittal Cover Sheet

IMPORTANT: This message (and accompanying material) is intended for the use of the individual to whom it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message (with its accompanying material) is not the intended recipient or the agent responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, dissemination, distribution, or copying of this communication or its contents is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return all material to our address below via the U.S. Postal Service. Thank you.

DATE: 1/27/2012

TIME:

NUMBER OF PAGES (INCLUDING COVER SHEET): 3

TRANSMITTED TO:

NAME: David Kappos, Undersecretary For Intellectual Property & Director

COMPANY: PTO

TELEPHONE: 571.272.8600

FAX: 571.273.0464

TRANSMITTED FROM:

NAME: Deanna T. Ongwela MS, PT

Email: deanna@deannatee.com

COMPANY: deanna Tee, LLC

TELEPHONE: 410.880.4091

FAX: 410.880.4092

Comments:

Credit card payment form (PTO-2038) faxed to 571.273.6500.

Thank you!